

REMARKS

Applicant respectfully requests reconsideration and allowance of the subject application. Claims 21 and 39 were previously canceled. Claims 1-20, 40-45 and 55-76 are presently canceled without prejudice and new claims 93-107 are added. Claims 22-38, 46-54 and 77-107 are pending in this application. Reconsideration is requested in view of the amendments and the remarks to follow.

New claims 93-107 are similar to claim 22 et seq. but differ in scope. In particular, new claim 93 reflects subject matter analogous to the subject matter of claim 35. New claims 93-107 are supported at least by text appearing at p. 2, line 11 through p. 21, line 8 of the application as originally filed. No new matter is added by new claims 93-107.

Allowable Subject Matter:

The Office Action states (summary; page 7) that claim 35 is objected to. The Office Action further states (p. 7, item 18) that claim 35 would be allowable if rewritten in independent form to include the recitation of the base claim and any intervening claims. Claim 93 includes such recitation and thus is allowable. Claims 94-107 depend from claim 93 and thus also are allowable over the art of record.

Election/Restriction

The Office Action states (pp. 2-3) that the claims are subject to a restriction requirement under 35 U.S.C. §121, and that such restriction requirement is now made **FINAL**. Claims 1-20, 22-38 and 40-45 have been canceled without prejudice, rendering the restriction requirement moot, however, such does not indicate agreement with the restriction requirement or waive any right to pursue the subject matter of any of such claims in another application.

35 U.S.C. § 103

Claims 22-34, 46-54 and 77-92 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Intel Internet Presentation Software, "5 Pages of Frequently Asked Questions About RealPresenter" (hereinafter "RP"), copyright 2002 by the Intel Corporation, published in 2002. Applicant respectfully submits that claims 22-34, 46-54 and 77-92 are not unpatentable over RP and requests reconsideration in view of the discussion to follow.

The Office Action also cites a one page publication in mixed English and Japanese, listing Hiroyuki-Et-Oh as a source, dated December 7, 1999. The five page document RP is clearly not a translation of the mixed English and Japanese document.

The present application was filed on December 16, 1999. No portion of the timing provisions of 35 U.S.C. §102 would qualify RP as being admissible as prior art. As set forth in 35 U.S.C. §103(a): A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the

prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Accordingly, in order for a reference to be employed in a rejection under 35 U.S.C. §103(a), it must be able to be considered as prior art under at least one section of 35 U.S.C. §102. A publication dated 2002, such as RP, does not qualify under any section of this statute. ~~_____~~ //

As a result, RP is not prior art to the present application, and the unpatentability rejection is moot. The Examiner will need to provide a non-Final Office Action stating a new grounds of rejection in the event that the Examiner persists in rejecting the claims. Additionally, the Form PTO-892 providing the incorrect reference date for this publication should be stricken from the record, and the Examiner should provide a Form PTO-892 with the correct dates.

Conclusion

Claims 22-34, 46-54 and 77-103 are in condition for allowance. Applicant respectfully requests reconsideration and issuance of the subject application. Should any matter in this case remain unresolved, the undersigned attorney respectfully requests a telephone conference with the Examiner to resolve any such outstanding matter.

Respectfully Submitted,

Date:

June 28, 2004

By:



Frederick M. Fliegel
Reg. No. 36,138
(509) 324-9256 x239